IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS.JUSTICE K.HEMA

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

MFA.No. 1160 of 2001(D)

OPMV.349/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PALAKKAD
DATED 5/05/2001
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APPELLANTS:PETITIONERS:
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1. **GANGADHARAN, AGED 64 YEARS,**
   S/O.AYYAPPAN, MANNAMKUDY HOUSE,
   NEELESWARAM P.O., KALADY (VIA),
   ERNAKULAM DISTRICT.

2. **THANKAMMA, AGED 62 YEARS,**
   W/O.GANGADHARAN, MANNAMKUDY HOUSE,
   NEELESWARAM P.O., KALADY (VIA),
   ERNAKULAM DISTRICT.

BY ADV. SRI.P.T.JOSE
SRI.PAULACHAN P.P.

RESPONDENTS: RESPONDENTS:
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1. **P.MUTHUSWAMY, S/O.PERIYA SWAMY,**
   PUDUMALAI ROAD, POLLACHI,
   COIMBATORE (DIST.).

2. **S.SUNDARAVALLI, AGED 46 YEARS,**
   W/O.CHANDRAN, 18-CHINNAMPALAYAM,
   UDUMALPET ROAD, POLLACHI,
   COIMBATORE (DIST.)

3. **UNITED INDIA INSURANCE CO.LTD.,**
   POLLACHI, COIMBATORE (DIST.)
   POLICY NO.170303/588/3242/31/21/4729/94)

R3 BY ADV. SRI.A.R.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 10/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

J.B. Koshy & K.Hema, JJ.

M.F.A.No. 1160 of 2001

Dated this the 10th day of December, 2007

Judgment

Koshy,J.

A 27 year old youngster died in a motor accident due to the negligence of the first respondent driver of the vehicle insured by the third respondent insurance company. His father and mother claimed compensation for an amount of Rs.7,00,000/-. Total compensation awarded was only Rs.1,40,000/-. Even though tribunal found the negligence of the first respondent driver of the vehicle owned by the second respondent and insured by the third respondent, the amount awarded was very low. Therefore, this appeal was filed. During the pendency of the appeal, first appellant father died. Only question is quantum of compensation.

2. The accident occurred while the deceased was driving the tempo van. The fact that he was driver of the tempo van is not disputed. He was the owner of the tempo van also. He had necessary licence and badge to drive the van. According to the claimants, he used to bring an average of Rs.4,500/- per month to the house, but, tribunal fixed only Rs.2,000/- as the monthly income

of the deceased. Being a driver-cum-owner of the tempo van, we are of the opinion that the tribunal ought to have taken at least Rs.3,000/- as monthly income and contribution to the family as Rs.2,000/-. The tribunal has taken only 8 as the multiplier. It was contended that multiplier fixed under the second schedule for a 27 year old accident victim is 18 and in 163-A claims, negligence of the offending vehicle need not be proved. Here, since the claim is under section 166, negligence of the offending vehicle had to be proved and that was proved in this case. Therefore, total compensation payable should not be less than the amount fixed under section 163-A under the second schedule. The Apex Court has held that in claims under section 166, while fixing the multiplier second schedule should be taken as a guideline. But, in cases of death of an unmarried person, age of the claimants also has to be taken into account for fixing the multiplier. Mother was aged 56 years at the time of accident. The tribunal has fixed 8 as the multiplier. We see no ground to interfere in the same. Therefore, compensation payable will be Rs.2,000 x 12 x 8 = Rs.1,92,000/-. For loss of dependency, the tribunal has fixed only Rs.1,28,000/-. So, additional compensation payable is Rs.64,000/-. The tribunal has granted reasonable compensation under other heads. The above

additional compensation of Rs.64,000/- over and above the decreed amount by the tribunal should be deposited by the third respondent insurance company with 7.5% interest from the date of application till its deposit. It is submitted that first appellant passed away recently. On deposit of the above amount, second appellant mother is allowed to withdraw the same.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1160 of 2001

Judgment

Dated:10th December, 2007